May 8, 2015

Via email and certified mail

Reviewing Officer
USDA Forest Service, Northern Region
P.O. Box 7669
Missoula, Montana 59807
appeals-northern-regional-office@fs.fed.us

RE: Objections to the Darby Lumber Lands Watershed Improvement and Travel Management Project, Phase 1, Draft Decision Notice and FONSI – Darby Ranger District, Bitterroot National Forest

Dear Reviewing Officer:

Objectors WildEarth Guardians (Lead Objector) and Friends of the Bitterroot ("FOB") file this objection to the Draft Decision Notice and Finding of No Significant Impact ("Draft DN and FONSI") for the Darby Lumber Lands Watershed Improvement and Travel Management Project, Phase 1 ("DLL Phase I"), dated March 27, 2015. Julie King, Bitterroot National Forest Supervisor, is the Responsible Official.

The Objectors timely filed comments on the first Draft Environmental Assessment for DLL Phase I, dated January 23, 2015, and scoping comments on January 14, 2014.

OBJECTIONS

Issue 1. DLL Phase I fails to comply with the Travel Management Rule and Minimization Criteria

Comments submitted: FOB-WildEarth Guardians pp. 5-7, 19, 24, 31, 35.

In its Revised Environmental Assessment of March 27, 2015 ("Revised EA") for DLL Phase I, the Darby Ranger District ("District") failed to demonstrate how it implemented or applied the minimization criteria in the route designation process, consistent with the objective of minimizing impacts. Therefore, the District's Draft DN and FONSI, including the National Environmental Policy Act ("NEPA") analysis for a travel management decision, does not adequately reflect how the Forest Service applied the minimization criteria in its motorized trail and area designations, and the agency's DN and FONSI is arbitrary and capricious and violates the Administrative Procedure Act ("APA"), NEPA, the National Forest Management Act ("NFMA"), the Travel Management Rule and the ORV Executive Orders, as detailed below.

When designating off-road vehicle trails and areas, federal agencies are required to minimize damage to forest resources, disruption of wildlife, and user conflicts. Exec. Order No. 11,644 § 3(a), 37 Fed. Reg. 2877 (Feb. 8, 1972), *as amended by* Exec. Order No. 11,989, 42 Fed. Reg. 26,959 (May 24, 1977). The Forest Service must locate designated trails and areas in order to minimize the following criteria: (1) damage to soil, watershed, vegetation, and other public lands resources; (2) harassment of

wildlife or significant disruption of wildlife habitat; and (3) conflicts between off-road vehicle use and other existing or proposed recreational uses. 36 C.F.R. § 212.55(b)(1)-(4).

Pursuant to the APA, courts must hold unlawful and set aside agency actions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A), (D).

The Revised EA for DLL Phase I continues to fall short of the requirements for a proper NEPA analysis, and does not provide sufficient information to allow the Darby Ranger District to comply with its obligations under the Executive Orders to minimize impacts from off-road vehicle trails and areas. By issuing the Draft DN and FONSI for DLL Phase I that will open previously undesignated routes without first applying the Executive Order criteria, the Forest Service has acted in a manner that is arbitrary, capricious, an abuse of discretion, not in accordance with the law, and without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (D). Because the District fails to take a hard look at impacts from off-road vehicle trails and areas, and because those impacts will significantly affect the quality of the human environment, the District must prepare an Environmental Impact Statement ("EIS"). 42 U.S.C. § 4332(2)(C).

In order to satisfy the Travel Management Rule, "the Forest Service must actually explain how it aimed to minimize environmental damage in designating routes." *Central Sierra Envtl. Resource Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1978, 1095 (E.D. Cal. 2013). The Forest Service cannot simply make conclusory statements about compliance with other laws to satisfy the minimization mandate. *See Friends of the Clearwater v. USFS*, 3:13-CV-00515, 2015 WL 1119593, at 33 (D. Idaho 2015).

In *Idaho Conservation League v. Guzman,* the Idaho district court concluded that the Forest Service must do more than just consider the Executive Order "minimization" criteria, as set out in 36 C.F.R. § 212.55(b). Rather, the agency must document in the administrative record how it applied the criteria in its designations on the record:

> The language "with the objective of minimizing" means that the whole goal or purpose of the exercise is to select routes in order to minimize impacts in light of the agency's other duties. Simply listing the criteria and noting that they were considered is not sufficient to meet this standard. Instead, the Forest Service must explain how the minimization criteria were applied in the route designation decisions.

766 F. Supp. 2d 2056, 1074 (D. Idaho 2011). As the court explained, "'[m]inimize' as used in the regulation does not refer to the number of routes, nor their overall mileage. It refers to the effects of route designations, i.e. the [Forest Service] is required to place routes specifically to minimize 'damage' to public resources, 'harassment' and 'disruption' of wildlife and its habitat, and minimize 'conflicts' of uses." *ICL v. Guzman* at 1073 (quoting *Ctr. for Biological Diversity v. U.S. Dept. of Interior*, 746 F. Supp. 2d 1055, 1061 (N.D. Cal. 2009)).

Before designating any trails for motorized use, the District's NEPA analysis must show how it actually applied the minimization criteria to all trails, and areas designated for motorized uses. The District has failed to do so in the Revised EA for this project. Although the Revised EA claims that it uses "multiple design features to minimize the effects of the project on natural resources," DLL Phase I will create trails that damage public resources, harass and disrupt wildlife and its habitat, and increase user conflicts. (Revised EA at 10).

By the plain terms of the executive order, DLL Phase I's proposed mitigation measures are insufficient to satisfy the Forest Service's obligation. Rather, the agency must *locate* routes to minimize impacts in the first instance. The Forest Service can and should apply additional mitigation, but that should be viewed as a second step in the process.

Moreover, the proposed mitigation measures will be largely ineffective. Most of the Project Design Criteria ("PDC") are vague, aspirational goals without clear directives for minimizing impacts and do not mitigate for ongoing and continuous loss of vegetation and soil disturbance, and subsequent sediment into streams from rain and snowmelt. For example, to "minimize aquatic effects," the District claims it will perform all in-stream work "in an expeditious manner to avoid unnecessary impacts to the stream." (Revised EA at 18). However, there is no specific direction for what "in an expeditious manner" means or what impacts would be avoided. Also, to "minimize aquatic effects," the District will perform all activities in the stream and immediate vicinity "in a manner to reduce in-stream turbidity along with minimizing disturbance to the streambed and/or banks of the stream." (Revised EA at 18). Again, this PDC fails to describe what the "manner to reduce" turbidity and impacts to the bed and banks of streams would actually entail and how it would minimize impacts.

The District's failure to apply minimization criteria to the DLL Phase I project plan results in harmful environmental, wildlife, recreation, and resource consequences, analyzed below.

a. DLL Phase I will further damage degraded, but valuable public resources.

The Darby Lumber Lands have "significant wildlife and fisheries values as well as a long tradition of public access to the adjacent National Forest lands." (Revised EA at 1).

However, prior to the implementation of DLL Phase I, "many stream crossings and sediment-reduction measures have failed since their initial construction. Road conditions, crossings and drainage features have deteriorated and now negatively affect soil, watershed and fisheries values due to accelerated erosion." (Revised EA at 2). Furthermore, fires in 2000 adversely affected many project area roads. (Revised EA at 4). Post-fire hydrology increased both road and upland chronic sediment contribution by decreasing protective vegetative cover and organic layers in the soil and increasing runoff and surface flows. (Revised EA at 4).

The District has not only failed to explain how it will minimize impacts from trails, but it has also proposed several new motorized routes that will increase harmful impacts. (Revised EA at 6). Despite the degraded condition of the project area, the Revised EA proposes to maintain and increase motorized access to all areas currently open in the acquired Darby Lumber Lands. (Revised EA at 34). The District proposes to increase the overall mileage open to motorized vehicles by about 11 miles. (Revised EA at 8). The District will create 5.3 miles of new motorized routes to "connect several forest system roads and enhance OHV recreation opportunities." (Revised EA at 116).

The Revised EA claims that the main purpose of DLL Phase I is to "reduce road-related sediment entering streams on National Forest System Lands in the Rye and Sleeping Child Creek drainages" and to "bring area streams into compliance with Bitterroot Forest Plan and Montana Department of Environmental Quality (MDEQ) standards." (Revised EA at 5). The Revised EA lists a secondary purpose, "to designate several existing roads as part of a sustainable route system for OHV's < 50",

along with building several connector trails to form loop routes." (Revised EA at 5). The Revised EA also lists a third purpose, "to promote the long-term existence of several aspen stands for wildlife habitat." (Revised EA at 5).

However, impacts from DLL Phase I's secondary purpose negatively impact the first purpose and pose serious risks to watershed health. Management activities associated with roads, trails, and cross-country motor vehicle use can "accelerate erosion and sediment beyond the historic range of variation and geological rate." (Revised EA at 117). The primary source of erosion and sediment is the trail or road itself, with accelerated erosion occurring once vegetative cover is lost. (Revised EA at 117). The extent of erosion is primarily determined by trail location and a complex interaction between topographic, soil, and geomorphic features. (Revised EA at 117).

Wheeled vehicles increase erosion from compaction, surface subsidence, and wheel shearing and pumping. (Revised EA at 117). Geomorphic effects of roads range from chronic and long-term contributions of fine sediment into streams to catastrophic mass failures of road cuts and fills during large storms. (Revised EA at 117). Roads affect geomorphic processes through four primary mechanisms: accelerating erosion from the road surface and prism itself by both mass and surface erosion processes, directly affecting channel structure and geometry, altering surface flow paths, and causing interactions among water, sediment, and woody debris at engineered road-stream crossings. (Revised EA at 117).

Although the Revised EA proposes a "lower level" of motorized access in the upper Sleeping Child watershed in an effort to complement the existing Sleeping Child Inventoried Roadless Area ("IRA") character, it proposes a higher level of motorized access in Rye Creek. (Revised EA at 22). All of the above-mentioned impacts will increase the potential for watershed destabilization and degradation.

b. Trails and roads proposed under DLL Phase I will increase dust.

The Revised EA fails to minimize impacts from dust and particulate matter emissions that will result from DLL Phase I.

The Revised EA concedes that road dust, including dust from winter road sanding and summer use of unpaved roads, "contributes particulate matter emissions." (Revised EA at 61). Road maintenance, storage, and decommissioning activities from DLL Phase I have the potential to produce dust particulate. (Revised EA at 61). Vehicle traffic on county roads that access the DLL Phase I area as well as use on Forest Service roads will generate dust particulate during dry conditions. (Revised EA at 61-62). Outside of the project area dust pollution will increase on access roads including Rye Creek and Sleeping Child roads.

However, the Revised EA fails to demonstrate how DLL Phase I will minimize environmental impacts from road-related dust. Analysis of dust impacts on water quality should be specifically disclosed rather than combining the analysis with impacts from road runoff. Sediment delivered to streams by water running off the road can be mitigated through design. Sediment delivered to streams by airborne dust could and should be minimized and mitigated by project design features such as utilizing dust abatement or altering the season of use.

c. DLL Phase I will harass elk and disrupt elk habitat.

DLL Phase I area is home to a significant elk herd, and the project will increase motorized use within a critical elk migration corridor. As provided in the Revised EA, "vehicle traffic on forest roads evokes an avoidance response by elk." (Revised EA at 80). Studies have shown that increased motorized access within the elk summer range has contributed to elk leaving their summer ranges on public lands and migrating to winter ranges on private lands. (Revised EA at 81).

DLL Phase I's motorized loops are "likely to attract increased levels of motorized use" which would increase the potential for human disturbance and mortality to elk during the summer in areas near motorized loops. (Revised EA at 88). Furthermore, the "[c]umulative effects to elk from past, present and reasonably foreseeable actions would likely continue." The Revised EA admits that DLL Phase I's cumulative effects to elk "would likely continue over time and possibly increase if the area becomes more popular with motorized users." (Revised EA At 88).

Although elk habitat losses "can be mitigated by applying road design and location standards during construction, and reduced through road closures," the District failed to implement any PDCs for road design and construction standards that would minimize harmful impacts to elk. (Revised EA at 80).

The Revised EA also admits that the DLL Phase I would not "fully comply with the Forest Plan standard for elk habitat effectiveness (EHE)." (Revised EA at 10). In an effort to remedy this, the Revised EA proposes a site-specific EHE amendment rather than designing DLL Phase I to meet the EHE standard.

The District justifies DLL Phase I's harassment of elk and disruption of elk habitat by stating that "[m]eeting the standard would result in substantial reductions in the public's ability to access and enjoy portions of the Forest." (Revised EA at 21).

d. DLL Phase I trails and roads will increase sediment in streams and disrupt native fish habitat.

Native fish, such as cutthroat trout and bull trout, currently reside in DLL Phase I area streams, including Sleeping Child Creek and Rye Creek. All of the streams within the Project area are also classified under the Montana Water Classification system as B1 streams. (Revised EA at 9). Montana requires that B1 streams provide for the "growth and propagation of salmonid fishes and associated aquatic life." Admin. R. Mont. 17.30.623.

Native fish in the DLL Phase I area are already struggling to survive due, in part, to impacts from: erosion, sedimentation and channel confinement from the existing road system; streambank instability along lower Rye Creek and lower Sleeping Child Creek; dispersed recreation and firewood collection along creeks; and seasonally unsuitable temperatures for native trout in the mainstem Bitterroot River as well as the lower reaches of many tributaries. (Revised EA at 42). The Revised EA fails to minimize these impacts and fails to apply minimization criteria to the DLL Project.

The Revised EA claims that DLL Phase I would adequately protect the riparian management objections ("RMOs"), native fish, and their habitats. (Revised EA at 9). However, DLL Phase I's proposed activities will deliver sediment into Sleeping Child and Rye Creek stream networks

immediately following project implementation. (Revised EA at 47).

Sediment in streams degrades native fish habitat by filling in interstitial spaces and pools, and decreasing inter-gravel dissolved oxygen concentrations. (Revised EA at 36). Deposited sediments harm native fish directly by smothering eggs in redds, altering spawning habitat, and reducing overwintering habitat for fry, and indirectly by altering invertebrate species composition, thereby decreasing abundance of preferred prey. (Revised EA at 44).

One example of sediment-delivery activities is culvert removal, which typically increases short-term sediment delivery to streams over one to three years despite its potential to improve sedimentation issues in the long-term. (Revised EA at 47). Short-term sediment delivery may destroy fish habitat and impact native fish before long-term benefits are able to materialize. Because removing culverts will improve the quality of fish habitat in the long-term, the Forest Service must specify how it will minimize or mitigate the short-term sediment delivery impacts to native fish and fish habitat.

Additionally, road and trail use generates sediment by disturbing and loosening soil at stream crossings and other sites within sediment-contributing distance (100 feet of streams), making any trails and roads within sediment-contributing distance sources of chronic fine sediment. (Revised EA at 48). Soils within the DLL Phase I area are mainly derived from granite and are easily eroded when disturbed or not fully vegetated. (Revised EA at 39). These characteristics make road systems built on them more difficult to manage and maintain, and create a higher risk of erosion and negative aquatic effects. (Revised EA at 39).

The Revised EA admits that there will be "some degree of increased traffic" on "what may become a more popular trail system," but then dismisses the effects of increased traffic as "expected to [be] minor." (Revised EA at 52). Although the Revised EA notes an increased quantity of eroded soil will reach stream channels from this increased traffic, it does not demonstrate how it applies the minimization criteria to reduce the amount of eroded soil reaching streams. The District finally acknowledges the negative impacts of increased motorized use and then summarily dismisses them. This is not just a cumulative effect; it is a direct effect. Putting more wheels on the ground increases sedimentation from traffic and increases the need for maintenance, especially where there are culverts. Within the DLL Phase I area, 160 stream crossings will produce 19.3 tons of sediment per year. (Revised EA at 48). DLL Phase I will deliver a significant amount of sediment to 6th-level watersheds in the area.

The Revised EA provides no discussion about how DLL Phase I's increased sedimentation will affect sensitive native fish habitat. Despite the potential for a net reduction in road-related sediment in the mid and long term, DLL Phase I will open several closed roads for motorized use. (Revised EA at 48). A newly opened trail segment in Upper Rye Creek may produce an increase in this minor component of the total motorized route sediment contribution. (Revised EA at 50). The Revised EA also extended the proposed season of use for TR104 – Sleeping Child Divide Trail from TR-3, which would have been closed for nine months from October 15 to June 15, to TR-2, which will now only be closed for one and a half months from October 15 to December 1. Consequently, DLL Phase I will actually increase road-related sediment in native fish-bearing streams and not minimize harmful impacts of sediment.

The environmental effects analysis is further flawed because it does not comply with the Inland Native Fish Strategy ("INFISH"). In an effort to protect inland native fish and their habitats,

INFISH established riparian goals, riparian management objectives ("RMOs"), and standards and guidelines for forest management practices that protect riparian habitat conservation areas ("RHCAs").

The Revised EA claims that DLL Phase I meets the INFISH standards and guidelines by avoiding impacts to native fish and their habitats. (Revised EA at 9). However, DLL Phase I applies a standard for riparian areas that is inconsistent with INFISH. The Revised EA describes activities outside of the "sediment-contributing distance" of 100 feet as being satisfactory for protecting streams from sediment-related impacts. Yet INFISH requires the following standard widths for RHCAs to protect native fish: Category 1, fish bearing streams require at least 300 feet on both sides, or 600 feet total; Category 2, permanently flowing non-fish bearing streams require at least 150 feet on both sides, or 300 feet total; and Category 4, seasonally flowing or intermittent streams and wetlands < 1 acre require 100 feet slope distance within priority watersheds and require 50 feet slope distance within non-priority watersheds. (INFISH EA, DN/FONSI, at A-5 (1995).

INFISH standard RM-1 requires that the Forest Service "[d]esign, construct and operate recreation facilities, including trails and dispersed sites, in a manner that does not retard or prevent attainment of the Riparian Management Objectives and avoids adverse effects on inland native fish." INFISH also states that "[a]ctions that reduce habitat quality, whether existing conditions are better or worse than objective values, would be inconsistent with the purpose of this interim direction." (INFISH at E-3). Furthermore, INFISH's standards and guidelines for RHCAs require that "where existing roads, facilities, and other improvements found to be causing an unacceptable risk cannot be relocated, eliminated or reconstructed, those improvements would be closed." (INFISH at E-6). The Revised EA does not perform an analysis of decommissioning existing roads that is consistent with INFISH's standards and guidelines because it proposes actions that will reduce habitat quality within the watershed.

e. DLL Phase I will increase user conflicts.

DLL Phase I will increase motorized use on routes in the Bitterroot National Forest, increasing conflicts between non-motorized and motorized users. The Bitterroot Forest Plan's forest-wide goals for recreation are to: "[p]rovide a broad spectrum of recreation experience opportunities," and "[p]rovide a safe trail system that protects soil and water resources." (USDA Forest Service, Bitterroot National Forest Plan, at II-2 (1987)). A vast majority of forest visitors enjoy quiet, non-motorized forms of recreation. Only 4.2 percent of Bitterroot National Forest visitors participate in motorized trail activity, and only 7.4 percent of visitors participate in snowmobiling. (*See* USDA Forest Service National Visitor Use Monitoring Activity Participation Report, generated May 8, 2015).

Although the R-code mileages in Table 2.5-1 suggest a slight reduction in winter wheeled access and associated recreational opportunities, DLL Phase I will increase summer access for OHVs < 50" in width. (Revised EA at 34). "The overall mileage open to motorized vehicles (including all R-codes that allow access and trails) increases by about 11 miles in Alternative B." (Revised EA at 8). However, by creating an OHV destination loop system that will attract many more OHV users to the area, the result will be an increase of use for the entire road system in the area.

The Revised EA erroneously claims that its contribution to user conflicts will be minor. (Revised EA at 23). First, DLL Phase I will cause increased motorized recreation within the Sleeping Child

IRA. (Revised EA at 36). Second, increased use adjacent to the IRA will result in more motorized noise that may be heard by recreators within the IRA seeking the benefits associated with the roadless area. (Revised EA at 36). Third, DLL Phase I will negatively affect non-motorized recreation due to fewer "walk-in" routes and new motorized use in acquired sections. (Revised EA at 23). Fourth, DLL Phase I will force non-motorized users to utilize routes designated as open to motorized use. (Revised EA at 123). While non-motorized users tend to favor closed roads in the area, these visitors would see fewer closed roads after the DLL Phase I's proposed storage and decommissioning treatments. (Revised EA at 34). Moreover, several currently closed roads would be open seasonally as routes for OHVs < 50" in width, further displacing non-motorized recreationists who use these closed routes. (Revised EA at 123). Thus, DLL Phase I would increase the potential for major user conflicts on routes designated as open to motorized use.

The Revised EA provides no specific plan, funding sources or design criteria to ensure effective law enforcement in the area of DLL Phase 1 to address the likely growth in motorized use. The proposed action includes approximately eight new OHV/single track connectors with associated routes. The OHV club intends to promote the area. It is likely that the project area will become a destination site and will experience a surge in use. With the onslaught of increased use there is high probability that unauthorized routes will be created, further enabling conflict with non-motorized users. The District must develop a specific and detailed law enforcement plan to minimize the potential for user conflicts that the public can trust to be effective.

Issue 2. DLL Phase I will harm bull trout.

Comments submitted: FOB-WildEarth Guardians pp. 16-21.

DLL Phase I will harm bull trout, listed as threatened with extinction under the Endangered Species Act ("ESA").

Bull trout is a threatened species of native fish that occurs in the DLL Phase I area within Sleeping Child Creek and some of its larger tributaries. (Revised EA at 11 and 45). Although bull trout are not currently found in Rye Creek and North Fork Rye Creek, bull trout were present in Rye Creek prior to the 2000 Fire. (Revised EA at 45). Accumulation of fine sediment has been an issue in Sleeping Child and Rye Creek for a few decades, but the Revised EA fails to analyze impacts from sediment in streams on bull trout. (Revised EA at 44).

As discussed above, the District's environmental effects analysis is flawed because it does not comply with INFISH and is therefore inconsistent with the 1987 Bitterroot Forest Plan. DLL Phase I actually increases sediment in streams, reducing the quality of bull trout habitat. The Revised EA does not incorporate adequate or legal RHCAs from INFISH and does not address how increased stream sediment will affect threatened bull trout. Therefore, DLL Phase I appears to be in violation not only of NEPA for failure to disclose environmental impacts of the proposal, but also of NFMA and the ESA for failure to comply with the forest plan and failure to adequately evaluate the impacts to an endangered species.

The Revised EA's flawed environmental effects analysis does not comply with INFISH's riparian goals, RMOs, RHCA widths, or standards and guidelines for forest management practices. The Revised EA claims that all of the alternatives would adequately protect the RMOs, native fish, and their habitats. (Revised EA at 9). However, DLL Phase I admits that it includes activities that

"would be considered to adversely impact bull trout." (Revised EA at 54). The Revised EA's improper 100-foot buffer for sediment-contributing activities is inconsistent with INFISH's standard widths for RHCAs. Because bull trout reside in Sleeping Child Creek, INFISH requires a buffer of at least 300 feet on both sides, or 600 feet total. Even in streams where no fish reside, INFISH requires at least 150 feet on both sides, or 300 feet total.

Cold water is a key factor related to the health and survival of native trout, especially bull trout. (Revised EA at 42). Bull trout are most common in streams that rarely exceed 55°F (13°C). (Revised EA at 42). Bull trout are common in Sleeping Child Creek, with temperatures cooler and more suitable to bull trout than Rye Creek. (Revised EA at 43). Although the Revised EA acknowledges that "removal of forest cover in road right-of-ways can increase solar radiation and wind penetration into the riparian zone, resulting in changes in riparian microclimate and stream temperature," the Revised EA fails to account for DLL Phase I activities that may increase stream temperatures and harm bull trout. (Revised EA at 44).

The Forest Service's approval of DLL Phase I that is inconsistent with INFISH and the 1987 Bitterroot Forest Plan violates NFMA's plan consistency provision, 16 U.S.C. § 1604(i), and is therefore arbitrary, capricious, an abuse of discretion, not in accordance with the law, and without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (D). Furthermore, the District must engage in consultation under section 7(a)(2) of the ESA to insure that DLL Phase I is not likely to jeopardize the continued existence of bull trout and will not destroy or adversely modify critical habitat for bull trout. 16 U.S.C. § 1536(a)(2).

Issue 3. Trails will increase sediment to CWA § 303(d) impaired streams.

Comments submitted: FOB-WildEarth Guardians pp. 17-19, 31, 35.

DLL Phase I will create trails that increase sediment to 303(d) listed streams. Rye Creek and Sleeping Child Creek are two of Montana's 303(d) impaired waters. (Revised EA at 4). Although both creeks support cold-water fisheries and aquatic life, sedimentation and siltation attributed to existing roads have already impacted these streams. (Revised EA at 4).

In accordance with the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, ("CWA"), the MDEQ completed the Total Maximum Daily Load ("TMDL") water quality assessment for Rye and Sleeping Child Creeks and the downstream Bitterroot River. (Revised EA at 4). A Memorandum of Understanding between the Forest Service and Montana requires the Forest Service to achieve pertinent water quality standards on lands it administers. (Revised EA at 5).

The Revised EA claims that the purpose of the project is "to reduce road-related sediment entering the streams on National Forest System Lands in the Rye and Sleeping Child Creek drainages and therefore, to bring area streams into compliance with Bitterroot Forest Plan and Montana Department of Environmental Quality (MDEQ) standards, including the 2011 Bitterroot River TMDL." (Revised EA at 5).

However, in addition to the sediment loads from the increased road and motorized trail density, a newly opened trail segment in Upper Rye Creek has the potential to increase the total motorized route sediment contribution. (Revised EA at 50). Upper Rye Creek is listed as one of Montana's 303(d) priority streams. Trails that increase sediment to Montana's 303(d) listed, impaired streams

contribute to watershed damage. Even if the Forest Service claims that there is a net benefit in the project area, the newly opened trail still violates the CWA since it will increase sedimentation into a 303(d) listed stream.

The Revised EA portrays its OHV loops as a secondary purpose. (Revised EA at 5). However the Decision seems to be giving primacy to this secondary purpose. It is unnecessary and contrary to the primary purpose of the project to build an OHV loop in the same area where the primary purpose of the project is also supposedly being targeted—an area that already has severely impaired water quality and reduced hunting opportunity. In fact, by insisting that both purposes be served in the same area, the secondary purpose works counterproductive to the primary purpose, since the addition of more motorized use in this area will degrade water quality and slow improvements to watershed health.

While driving on roads has long been identified as a major contributor to stream sedimentation (for review see Gucinski 2001), recent studies have found ORVs to be a significant cause of stream sedimentation as well. (Sack and da Luz 2003, Chin et al. 2004, Welsh et al. 2006). While roads often have greater erosion and contribute to stream sedimentation more than trails, this is not always the case. One study found that ORV trails produced five times more sediment than unpaved roads. (Welsh et al. 2006). It has also been demonstrated that sediment loss increases with increased ORV traffic. (Foltz 2006). A study by Sack and da Luz (2003) found that ORV use resulted in a loss of more than 200 pounds of soil off every 100 feet of trail each year. For a more comprehensive literature review of the effects of roads, see The Wilderness Society, Transportation Infrastructure and Access on National Forests and Grasslands, A Literature Review (May 2014).

The Revised EA provides no discussion of specific sedimentation to Little Sleeping Child, Sleeping Child, North Rye Creek, Rye Creek, and Divide Creek. (Revised EA at 44). It only provides the stream crossing sediment load for Upper Rye Creek, Lower Rye Creek, and Upper Sleeping Child Creek. (Revised EA at 40). If the District does not consider how much sediment is being delivered to these creeks currently then it would be almost impossible know whether and how much the proposed action will or will not minimize sediment delivery. This constitutes a failure to comply with NEPA and the CWA (in addition to the minimization criteria, as explained above). Because the District fails to take a hard look at sediment delivery impacts, and because those impacts will significantly affect the quality of the human environment, the District must prepare an EIS. 42 U.S.C. § 4332(2)(C).

RELIEF REQUESTED:

WildEarth Guardians and FOB request that the Forest Service ensure that the DLL Phase I EA, associated decision documents, and decision: (1) comply with the Travel Management Rules, including a proper application of minimization criteria to route designation; (2) comply with the ESA to protect listed species, including by engaging in consultation with the Fish and Wildlife Service under section 7(a)(2) to ensure that DLL Phase I does not jeopardize listed species or adversely modify designated critical habitat; (3) meet INFISH standards and comply with the Forest Plan under NFMA; (4) comply with the CWA and state water quality standards; (5) assess the impacts of all roads and trails, whether open, closed, decommissioned or user-created, and whether legal or illegal; (6) propose meaningful mitigation measures; (7) compile and utilize needed baseline

data on all roads and trails; and (8) properly analyze the significant environmental effects of DLL Phase I by preparing an EIS.

Specifically, WildEarth Guardians and FOB request the following changes to the DLL Phase I project that would largely correct the many deficiencies detailed above:

1. Connector B should not be constructed. Road 1392 should be closed or decommissioned to help with EHE compliance. Road 73921 should not be opened due to the high risk to bull trout, soils and water.

2. A specific plan, funding sources and design criteria should be drafted to ensure effective law enforcement. In addition, at least 35% of any ATV funds utilized for the project should be dedicated to law enforcement.

3. The decision should improve elk habitat and hunting opportunities for both archery and rifle seasons. Cumulative effects on elk from this proposal are negative. One step to correct this would be to drop Connectors I and L. Currently 3 of 5 elk criteria worsen with proposal, including bow hunting and the EHE index.

4. Connector A should be dropped and single track trail 104 not be widened as it would lead to 104 being even further widened by ATVs.

5. Trail 84 should be turned into a non-motorized trail to help offset the motorized additions and to protect the Sleeping Child IRA.

6. Though dropped in the draft Revised EA, Fishtail needs to be effectively blocked to prevent future illegal motorized incursions.

7. Trail 104 extension and Connector J should be dropped. They are duplicative of motorized opportunity on Road 715.

WildEarth Guardians and FOB are willing to meet with the Reviewing Officer at a mutually convenient time. Thank you very much for your consideration of the above objections. Please inform us in writing of any responses to these objections or of any further opportunities to comment or decisions. The objector can be reached via telephone at (503) 730-9242.

Sincerely,

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References:
In addition to the above objections, the Objectors are also submitting the following scientific studies and reports, which are attached and incorporated throughout this objection by this reference. The Objectors refer to specific sections of the reports throughout, and the reviewers should refer to these studies and reports to understand the complete idea and context of the objection.

Chin, Anne et al., *Effects of All Terrain Vehicles on Stream Dynamics*, J.M. Guldin (ed.). Ovachita and Ozark Mountains Symposium: Ecosystem Management Research, Gen. Tech. Rpt. SRS-74. Ashville, N.C., U.S. Dept. Ag. Forest Serv., S. Research Station, 292 (2004).

Foltz, Randy B., *Erosion from All Terrain Vehicle (ATV) Trails on National Forest Lands*, Proceedings of the American Society of Agricultural and Biological Engineers Annual International Meeting in St. Joseph, Mich., Paper Number 068012 (July 2006).

Gucinski, Herman et al., *Forest Roads: A Synthesis of Scientific Information*, Gen. Tech. Rpt. PNW-GTR-509, U.S. Dept. Ag. Forest Serv., Pac. Nw. Research Station, (May 2001).

Sack, D. & da Luz, S., *Sediment Flux and Compaction Trends on Off-Road Vehicle (ORV) and Other Trails in an Appalachian Forest Setting*, 24 Phys. Geog. 536 (May 2003).

USDA Forest Service National Visitor Use Monitoring Activity Participation Report, generated May 8, 2015.

Welsh, Matthew J., Sediment Production and Delivery from Forest Roads and Off-Road Vehicle Trails in the Upper South Platte River Watershed, Colorado, Master of Science Thesis: Colorado State University, Fort Collins, Colo. (2008).

Wilderness Society, The, Transportation Infrastructure and Access on National Forests and Grasslands, A Literature Review (May 2014).